Supreme Court, U.S.
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No. 94-1530

In the Supreme Court of the United States

OCTOBER TERM, 1994

THINGS REMEMBERED, INC.,
Petitioner,

v.

ANTHONY A. PETRARCA,
Respondent.

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S BRIEF IN OPPOSITION TO MOTION OF PUTATIVE *AMICUS* TO FILE BRIEF

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PETITIONER'S BRIEF IN OPPOSITION TO MOTION OF PUTATIVE *AMICUS* TO FILE BRIEF

This matter is before the Court on the motion of the Connecticut Bar Association, Commercial Law and Bankruptcy Section ("CLBS"), for leave to file a brief *amicus curiae*. Petitioner Things Remembered, Inc. opposes the motion, and requests that it be denied, because (1) CLBS has no legitimate interest in this case that suffices for *amicus* status, (2) the matters addressed in the CLBS brief have either been adequately briefed by the parties or are not relevant here, and (3) in the circumstances, permitting CLBS *amicus* status would be unduly burdensome and manifestly unfair.

1. CLBS Has No Legitimate Interest That Suffices for Amicus Status.

CLBS claims an interest in, variously, "the administration of justice generally," *CLBS Motion* at 2, or in "the administration of bankruptcy in particular," *id.*, or in "the resolution of the case at bar," *id.* at 4. Those general interests are, of course, common with those of virtually every bar association and indeed virtually every lawyer.

If the only reasons proffered by CLBS for its interest here (the administration of justice generally, etc.) suffice for *amicus* status, then any lawyer should be able to obtain *amicus* status for any case. *Amicus* status means, and should mean, something special, and Petitioner submits that more than a generalized interest in the "administration of justice generally," or even "the administration of bankruptcy in particular," should be required.

2. The Matters Addressed in the CLBS Brief Have Either Been Adequately Briefed by the Parties or Are Not Relevant Here.

The "omissions" of the parties, CLBS says, require that it brief certain "crucial issues vital to consideration of this matter." *Amicus Motion* at 3. But the parties here, whose interests are real, not academic, had every reason to brief every possible issue, if they deemed those issues relevant, important, and appropriate. If they did not brief the issues that CLBS does, it can fairly be presumed that each party, upon intense and detailed reflection and study, deemed those issues less than relevant, important, and appropriate.

Thus, for example, a good portion of Petitioner's argument is that the legislative history of the relevant statutes is scant; and that in any event it cannot be read contrary to the language of the statute. *Brief for Petitioner* at 13-18, 24-25. Respondent also discusses his view of the legislative history at the length and in the detail that he deemed appropriate. *Brief for Respondent* at 14-19, *passim*.

CLBS, however, argues that other legislative history, pre-Bankruptcy Code practice, and "the larger context of the policies that animate bankruptcy administration as a whole," *CLBS Brief* at 27-28, must be considered. That argument proceeds contrary to this Court's precedents, old and new, which hold that legislative history and policy is a secondary consideration, of little or no weight where the statutory language is plain. *Caminetti v. United States*, 242 U.S. 470, 490 (1917); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242-46 (1989) (plain meaning of a statute is

conclusive; when language is clear, pre-Bankruptcy Code practice is irrelevant). In short, the CLBS brief in no sense raises "crucial" issues and consideration of them is not only not "vital" but inappropriate. The CLBS brief does not "bring[ ] relevant matter to the attention of the Court that has not already been brought to its attention by the parties," *Sup. Ct. R.* 37.1. Rather, it will "simply burden[ ] the staff and facilities of the Court," *id.*, with extraneous materials, to no good end.

3. Permitting *Amicus* Status to CLBS in This Case Would be Unnecessarily Burdensome to the Court and Manifestly Unfair to Petitioner.

If the CLBS brief were a law review article, then the Court and the parties could address it or ignore it as they deemed best. Blessed with the imprimatur of *amicus* status, however, the brief obtains a legitimacy, in the specific context of this case, that it otherwise would not have. And if the CLBS brief is to be permitted, Petitioner has an obvious and understandable concern about addressing all of the points raised, and the authorities cited, despite Petitioner's belief that many of those points and authorities are not appropriate matters for this Court's consideration.

Consideration of the CLBS brief would be a significant additional burden to the Court and the parties. Petitioner cited 30 cases in its brief, Respondent 29 in its brief. The putative *amicus* CLBS, however, cites an astounding 71 cases -- and of those, 63 were never mentioned in either of the parties' briefs. Though Petitioner believes few of those additional cases are relevant to the issue presented, simple lawyerly prudence obliges Petitioner's

counsel to read, study, analyze, and, if necessary, address those 63 cases -- as well as the plethora of statutory provisions (29 in the CLBS brief, in contrast to 11 in Petitioner's brief and seven in Respondent's) treatises, legislative materials, and other authorities. And the misstatements of the record and status of the case in the CLBS brief (an apparent result of total lack of familiarity with the case thus far) are a matter of concern as well.

Petitioner has 20 pages, and less than 30 days, for its reply brief. A newly-opened second front, and one so far removed from the original field, is unnecessary and unfair.

Conclusion

The interest of the putative *amicus* is dubious, and its brief addresses matters neither required nor appropriate for consideration. For these reasons, the motion should be denied.

Respectfully submitted,

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